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*Attorneys for Plaintiffs and the Class*

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO AND OAKLAND DIVISION

THOMAS FERNANDEZ, LORA SMITH, and  
 TOSHA THOMAS, individually and on behalf  
 of a class of all other persons similarly situated,

Plaintiffs,

vs.

K-M INDUSTRIES HOLDING CO., INC.;  
 K-M INDUSTRIES HOLDING CO., INC.  
 ESOP PLAN COMMITTEE; WILLIAM E.  
 AND DESIREE B. MOORE REVOCABLE  
 TRUST; TRUSTEES OF THE WILLIAM E.  
 AND DESIREE B. MOORE REVOCABLE  
 TRUST; CIG ESOP PLAN COMMITTEE;  
 NORTH STAR TRUST COMPANY;  
 DESIREE B. MOORE REVOCABLE TRUST;  
 WILLIAM E. MOORE MARITAL TRUST;  
 WILLIAM E. MOORE GENERATION-  
 SKIPPING TRUST; and DESIREE MOORE,  
 BOTH IN HER INDIVIDUAL CAPACITY  
 AND AS TRUSTEE OF THE WILLIAM E.  
 AND DESIREE B. MOORE REVOCABLE  
 TRUST'S SUCCESSOR TRUSTS NAMED  
 ABOVE,

Defendants.

Case No. C-06-07339 CW

**DECLARATION OF DANIEL  
 FEINBERG IN SUPPORT OF  
 PLAINTIFFS' OPPOSITION TO  
 DEFENDANTS' MOTIONS FOR  
 SUMMARY JUDGMENT**

DECLARATION OF DANIEL FEINBERG  
 [CASE No. C-06-07339 CW]

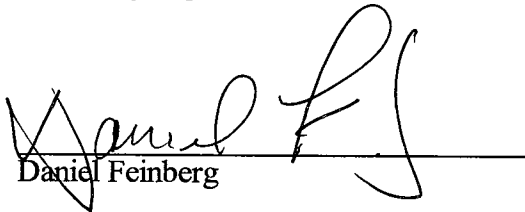
1 I, Daniel Feinberg, declare as follows:

2 1. I am a member in good standing of the State Bar of California and an attorney with  
3 Lewis, Feinberg, Lee, Renaker & Jackson, P.C., which is counsel for Plaintiffs and the Class in  
4 this action. I have personal knowledge of the facts contained in this declaration and, if called to  
5 testify, will testify as set forth below.

6 2. On May 22, 2008, I had a detailed telephone discussion of Plaintiffs' theory of  
7 liability against defendant North Star and position with regard to the applicable statute of  
8 limitations with North Star's counsel herein, Nicole Diller and Donald Sullivan.

9 3. A true and correct copy of Plaintiffs' Supplemental Response to Interrogatory No.  
10 24 of Defendant North Star Trust Company's First Set of Interrogatories to Plaintiffs. Plaintiffs'  
11 theory of liability against North Star is set forth at page 7.

12 I declare under penalty of perjury that the foregoing is true and correct. Executed on July  
13 10, 2008 at Oakland, California.

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15 Daniel Feinberg  
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DECLARATION OF DANIEL FEINBERG  
[CASE No. C-06-07339 CW]

# **EXHIBIT 1**

1 Daniel Feinberg (CA State Bar No. 135983)  
Todd F. Jackson (CA State Bar No. 202598)  
2 Margaret Hasselman (CA State Bar No. 228529)  
Nina Wasow (CA State Bar No. 242047)  
3 Kirsten G. Scott (CA State Bar No. 253464)  
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14 *Attorneys for Plaintiffs and the Proposed Class*

15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO AND OAKLAND DIVISION

18 THOMAS FERNANDEZ, et al.,

CASE NO.: C-06-07339 CW

19 Plaintiffs,

20 vs.

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22 K-M INDUSTRIES HOLDING CO.,  
23 INC., et al.,

24 Defendants.  
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**PLAINTIFFS' SUPPLEMENTAL RESPONSE  
TO INTERROGATORY NO. 24 OF  
DEFENDANT NORTH STAR TRUST  
COMPANY'S FIRST SET OF  
INTERROGATORIES TO PLAINTIFFS**

1  
2 PROPOUNDING PARTY: Defendant North Star Trust Company  
3 RESPONDING PARTY: Plaintiffs Thomas Fernandez, Lora Smith and Tosha  
4 Thomas  
5 SET NUMBER: One  
6

7 **PLAINTIFFS' PRELIMINARY STATEMENT**

8 Plaintiffs respond to Interrogatory No. 24 served by Defendant North Star Trust Company  
9 ("North Star") pursuant to an agreement of the parties in which Defendants agreed to withdraw  
10 certain other interrogatories, and Plaintiffs agreed to provide one response on behalf of all three  
11 named Plaintiffs. Therefore, although North Star served separate, identical interrogatories on  
12 each Plaintiff, this response is made jointly on behalf of all three Plaintiffs listed above.  
13 Plaintiffs' response is based only upon the information that is presently available to and  
14 specifically known by Plaintiffs, except as to those matters stated on their information and belief,  
15 and as to those matters they believe them to be true. Independent investigation, legal  
16 research, and analysis may supply additional facts and add meaning to the known facts, as well as  
17 establish entirely new factual conclusions and legal contentions, all of which may lead to the  
18 discovery of additional information, thereby resulting in additions to, changes in, and variations  
19 from, this response.  
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22 This response is given without prejudice to Plaintiffs' right to produce evidence of any  
23 subsequently discovered documents or compiled facts or determinations thereof that Plaintiffs  
24 may later locate or discover. Accordingly, Plaintiffs reserve the right to change this response as  
25 additional facts are ascertained, analyses are made, legal research is completed, contentions are  
26 made, and documents are located. Moreover, all information is being produced only for the  
27 purpose of this litigation.  
28

1 Plaintiffs reserve the right, notwithstanding this response, to employ at trial or in any pre-  
2 trial proceeding, information subsequently obtained or discovered, information the materiality of  
3 which is not presently ascertained, or information Plaintiffs do not regard as coming within the  
4 scope of this interrogatory as Plaintiffs understands it. Any information within the scope of the  
5 attorney-client privilege, the attorney work product doctrine, or any other privilege or protection  
6 that is inadvertently disclosed herein is not intended to be and should not be construed to be a  
7 waiver of any applicable privilege or immunity from disclosure, except where such privilege is  
8 expressly waived by Plaintiffs in writing. Plaintiffs reserve the right to assert these privileges at  
9 any time in these proceedings and further reserves the right to request the return of all privileged  
10 information, including copies of the responses themselves. In addition, all evidentiary objections  
11 are reserved and no waiver of any objection is to be implied from any response. To the extent that  
12 a response might arguably waive an otherwise assertable objection or claim of privilege, such  
13 waiver shall be limited to the specific response only and shall not extend to any other discovery.  
14 Plaintiffs make no incidental or implied admissions with regard to the contents of this response.  
15 The fact that Plaintiffs have responded or objected to any interrogatory or any part thereof should  
16 not be taken as an admission that Plaintiffs accept or admit the existence of any facts set forth or  
17 assumed by Propounding Party's interrogatory, or that such response or objection constitutes  
18 admissible evidence. The fact that Plaintiffs have answered part or all of any interrogatory is not  
19 intended and shall not be construed to be a waiver by Plaintiffs of any objections to any  
20 interrogatory or to further inquiry into the subject matter of any interrogatory.

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24 This response is made solely for the purpose of this action. It is subject to all objections as  
25 to competence, relevance, materiality, propriety, admissibility, privacy, privilege, and any and all  
26 other objections that would require exclusion of any statement contained here if any such requests  
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1 were asked of, or any statement contained here were made by, a witness present and testifying in  
2 court, all of which objections and grounds are reserved and may be interposed at the time of trial.

3  
4 **SPECIAL INTERROGATORY NO. 24:**

5 Please state each and every fact upon which YOU base YOUR allegations in the SAC that  
6 DEFENDANT breached a fiduciary duty to YOU or engaged in a prohibited transaction, as the  
7 terms "fiduciary duty" and "prohibited transaction" are defined in the SAC.

8 **OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 24:**

9 Plaintiffs incorporate their general objections by reference. Plaintiffs further object to  
10 this interrogatory as compound, overbroad and unduly burdensome by virtue of its direction to  
11 "state each and every fact" upon which Plaintiffs base their allegations. Plaintiffs will state the  
12 principal and material facts on which they base their claims against each group of Defendants as  
13 agreed at the meet-and-confer session on May 20, 2008. *See Lucero v. Valdez*, 240 F.R.D. 591  
14 (D. N.M. 2007). Plaintiffs further object to this Interrogatory as premature, unduly burdensome,  
15 harassing, oppressive, and abusive of the discovery process on the grounds that it constitutes an  
16 improper contention interrogatory to the extent it is not narrowly tailored but rather seeks all facts  
17 supporting Plaintiffs' entire claims. Plaintiffs further object to this Interrogatory on the ground  
18 that it seeks the identity of, facts known by, and opinions held by Plaintiffs' consulting, non-  
19 testifying experts. Such information is shielded from disclosure by Fed. R. Civ. P. 26(b)(4)(B)  
20 and the attorney work product privilege. Plaintiffs further object to this Interrogatory on the  
21 ground that it seeks communications, information, or documents that are protected by the  
22 attorney-client privilege and/or the attorney work product doctrine. Plaintiffs further object to  
23 this Interrogatory on the grounds that it is unduly burdensome, harassing, oppressive, and abusive  
24 of the discovery process because it requests production of information and documents equally  
25 available to Defendant because Defendant has equal access to all documents produced by all  
26 parties to this action and by third parties, and has equal access to all transcripts of depositions  
27 taken by any party in this action. Any further description of the information responsive to this  
28 Interrogatory would require revelation of attorneys' mental impressions, strategies, analysis of

1 documents and testimony, and opinions regarding those materials' role in the proof of Plaintiffs'  
2 case, which is protected by the attorney work product doctrine. Plaintiffs further object to this  
3 interrogatory on the ground that it is overbroad, unduly burdensome, harassing, and abusive of the  
4 discovery process because it requests that Plaintiffs state every fact concerning their entire First  
5 and Second Claims for Relief. It is also objectionable as unduly burdensome, harassing, and  
6 abusive of the discovery process because it is duplicative of Interrogatories Nos. 1-25 served by  
7 Defendant K-M Industries Holding Co., Inc., and of Interrogatories Nos. 1-22 served by  
8 Defendant K-M Industries Holding Co., Inc. ESOP Plan Committee. Plaintiffs do not waive any  
9 other objection that may apply.

10 Subject to and without waiving the foregoing objections and their right to supplement any  
11 answers as further facts are discovered or to rely upon facts not described in this response,  
12 Plaintiffs provide the following response with respect to each Defendant:

13 **KM Defendants** (*K-M Industries Holding Co., Inc.; K-M Industries Holding Co. Inc. ESOP Plan*  
14 *Committee; CIG ESOP Plan Committee*)

15 Plaintiffs contend that the KM Defendants and William E. Moore, and each of them,  
16 breached their fiduciary duties of loyalty and prudence and engaged in a prohibited transaction by  
17 causing the Plans to pay more than fair market value for KMH stock; failing to conduct a  
18 thorough and independent review and adequately consider whether the October 1998 purchase of  
19 KMH Series P stock and the October 1999 purchase of KMH Series I stock from Defendant  
20 Moore Trust were in the best interests of the Plan participants; failing to undertake an adequate  
21 and independent valuation of the KMH stock prior to those transactions; failing to ensure that  
22 they secured an independent expert assessment of the fair market value of KMH stock prior to  
23 those transactions; failing to investigate adequately the qualifications of any and all valuation  
24 experts retained to prepare the valuations of KMH stock in connection with the transactions;  
25 failing to provide complete and accurate information regarding KMH to such valuation experts  
26 for use in the valuations prepared in connection with the transactions; failing to make certain that  
27 reliance on any and all valuation experts' advice was reasonably justified under the circumstances  
28 of the transactions; failing adequately to consider how KMH's potential asbestos liabilities



1 affected the value of KMH Series I and Series P stock; failing adequately to consider that the  
 2 status of KMH Series I and Series P stock as "tracking stock" affected its value; failing to make  
 3 an honest, objective effort to read the valuation reports, understand them, and question the  
 4 methods and assumptions that did not make sense; failing to seek a refund of the KMH Plan's  
 5 overpayment for KMH stock at any time between 1998 and the present; overvaluing the KMH  
 6 stock purchased from Defendant Moore Trust by the KMH Plan in October 1998 and October  
 7 1999; withholding information about KMH's potential asbestos liabilities from valuers; and  
 8 violating the terms of the plan document of the KMH Plan by refusing to redeem Plaintiff Smith's  
 9 put option on the schedule established by the KMH Plan. Plaintiffs further incorporate by  
 10 reference their responses to Interrogatory No. 6 of the K-M Industries Holding Co., Inc. ESOP  
 11 Plan Committee's First Set of Interrogatories. Plaintiffs are unable to state further facts and  
 12 identify further documents without revealing information protected by the attorney work-product  
 13 doctrine, and on that basis will not further respond.

14 **Moore Trust Defendants** (*William E. and Desiree B. Moore Revocable Trust and the trustees*  
 15 *thereof; Desiree B. Moore Revocable Trust; William E. Moore Marital Trust; William E. Moore*  
 16 *Generation-Skipping Trust; and Desiree B. Moore*)

17 Plaintiffs contend that the Moore Trust Defendants engaged in a prohibited transaction  
 18 under ERISA because the William E. and Desiree B. Moore Revocable Trust was a party in  
 19 interest to the Plan, and the Plan paid more than adequate consideration for the shares of KMH  
 20 purchased in 1998 and 1999 as described above. The William E. and Desiree B. Moore  
 21 Revocable Trust and Desiree B. Moore also knowingly participated in the breaches of fiduciary  
 22 duty described above committed by William E. Moore and the KM Defendants, and Desiree B.  
 23 Moore is also liable as a co-fiduciary because she enabled the breaches described above and did  
 24 not prevent or make reasonable efforts to remedy the breaches described above. Plaintiffs are  
 25 unable to respond further without revealing attorney work product or prematurely disclosing  
 26 expert testimony. Plaintiffs will disclose expert reports in accordance with the Court's pre-trial  
 27 scheduling order.  
 28

1 ***Defendant North Star Trust Company***

2 Plaintiffs contend that Defendant North Star Trust Company breached its fiduciary duty to  
3 Plan beneficiaries by failing to: (1) adequately investigate whether the Plan paid more than fair  
4 market value for KMH stock in the October 1998 and October 1999 transactions; (2) adequately  
5 investigate whether the prior fiduciaries breached their fiduciary duties to the Plan, including by  
6 failing to adequately investigate whether the prior fiduciaries committed the breaches outlined  
7 above as committed by William E. Moore and the KM Defendants; and (3) take reasonable steps  
8 to remedy such breaches. Plaintiffs are unable to respond further without revealing attorney work  
9 product or prematurely disclosing expert testimony.  
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1 Dated: June 12, 2008

2 LEWIS, FEINBERG, LEE  
3 RENAKER & JACKSON, P.C.

4 By:

  
Margo Hasselman

5 Daniel Feinberg (CA State Bar No. 135983)  
6 Todd F. Jackson (CA State Bar No. 202598)  
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**PROOF OF SERVICE**

I, Vickie Martin, declare:

My business address is 1330 Broadway, Suite 1800, Oakland, California 94612. I am over the age of 18 years and not a party to the above-entitled action.

On June 12, 2008 I served:

**PLAINTIFFS' SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 24 OF  
DEFENDANT NORTH STAR TRUST COMPANY'S FIRST SET OF  
INTERROGATORIES TO PLAINTIFFS**

on the persons listed below by electronic mail and by placing a true and correct copy thereof in a United States Postal Service Mail Box, with First Class with postage prepaid, addressed as follows:

Ronald Lovitt  
J. Thomas Hannan  
Henry I. Bornstein  
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San Francisco, CA 94111  
Telephone: 415-362-8769  
E-mail: rl@lh-sf.com, jth@lh-sf.com, hib@lh-sf.com

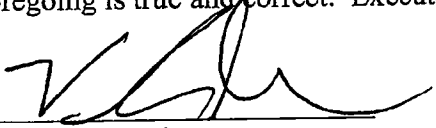
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*Attorneys for Defendants*

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I declare under penalty of perjury that the foregoing is true and correct. Executed on  
June 12, 2008, at Oakland, California.

  
Vickie Martin